

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

ZACHERY KING EDWARD CONNER, Movant, vs. UNITED STATES OF AMERICA, Respondent.	4:20-CV-04073-KES ORDER GRANTING MOVANT'S MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS
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Movant, Zachery King Edward Conner, filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Docket 1. Judgment was entered against Conner, and he filed a notice of appeal. Dockets 45 and 46. The court denied Conner a certificate of appealability. Docket 44 at 2. Conner now files a motion for leave to appeal in forma pauperis and included a prisoner trust account report. Dockets 47 and 49.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S. C. § 1915(a)(1), (3).

Conner's prisoner trust account report indicates that he has average monthly deposits to his prisoner trust account of \$410.65 and an average

monthly balance of \$456.20. Docket 49 at 1. Conner's notice of appeal appears to be taken in good faith. Because Conner has insufficient funds to pay the \$505.00 appellate filing fee, his motion for leave to appeal in forma pauperis (Docket 47) is granted.

IT IS ORDERED:

1. That Conner's motion for leave to appeal in forma pauperis (Docket 47) is granted.

Dated November 1, 2021.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE